

SENATE BILL No. 1260

May 10, 2006, Introduced by Senators McMANUS, KUIPERS, GOSCHKA, BISHOP and ALLEN and referred to the Committee on Appropriations.

A bill to amend 1994 PA 451, entitled "Natural resources and environmental protection act," by amending sections 21502, 21503, 21506a, and 21552 (MCL 324.21502, 324.21503, 324.21506a, and 324.21552), section 21502 as amended and sections 21506a and 21552 as added by 2004 PA 390 and section 21503 as amended by 1996 PA 181.

THE PEOPLE OF THE STATE OF MICHIGAN ENACT:

1 Sec. 21502. As used in this part:

2 (a) "Administrator" means the fund administrator provided for
3 in section 21513.

4 **(B) "ADVISORY BOARD" MEANS THE TEMPORARY REIMBURSEMENT PROGRAM**
5 **ADVISORY BOARD ESTABLISHED UNDER SECTION 21562.**

1 (C) ~~(b)~~ "Approved claim" means a claim that is approved
2 pursuant to section 21515.

3 (D) ~~(e)~~ "Authority" means the Michigan underground storage
4 tank financial assurance authority created in section 21523.

5 (E) ~~(d)~~ "Board" means the Michigan underground storage tank
6 financial assurance policy board created in section 21541.

7 (F) ~~(e)~~ "Board of directors" means the board of directors of
8 the authority.

9 (G) ~~(f)~~ "Bond proceeds account" means the account or fund to
10 which proceeds of bonds or notes issued under this part have been
11 credited.

12 (H) ~~(g)~~ "Bonds or notes" means the bonds, notes, commercial
13 paper, other obligations of indebtedness, or any combination of
14 these, issued by the authority pursuant to this part.

15 (I) ~~(h)~~ "Claim" means the submission by the owner or
16 operator or his or her representative of documentation on an
17 application requesting payment from the fund. A claim shall
18 include, at a minimum, a completed and signed claim form and the
19 name, address, telephone number, and federal tax identification
20 number of the consultant retained by the owner or operator to carry
21 out responsibilities pursuant to part 213.

22 (J) ~~(i)~~ "Consultant" means a person on the list of qualified
23 underground storage tank consultants prepared pursuant to section
24 21542.

25 (K) ~~(j)~~ "Co-pay amount" means the co-pay amount provided for
26 in section 21514.

27 (L) ~~(k)~~ "Corrective action" means the investigation,

1 assessment, cleanup, removal, containment, isolation, treatment, or
2 monitoring of regulated substances released into the environment or
3 the taking of such other actions as may be necessary to prevent,
4 minimize, or mitigate injury to the public health, safety, or
5 welfare, the environment, or natural resources.

6 (M) ~~-(l)-~~ "Department" means the department of environmental
7 quality.

8 (N) "ELIGIBLE PERSON" MEANS AN OWNER OR OPERATOR WHO MEETS THE
9 ELIGIBILITY REQUIREMENTS IN SECTION 21556 OR 21557 AND RECEIVED
10 APPROVAL OF HIS OR HER PRECERTIFICATION APPLICATION BY THE
11 DEPARTMENT.

12 (O) ~~-(m)-~~ "Financial responsibility requirements" means the
13 financial responsibility for taking corrective action and for
14 compensating third parties for bodily injury and property damage
15 caused by a release from an underground storage tank system that
16 the owner or operator of an underground storage tank system must
17 demonstrate under part 211 and the rules promulgated under that
18 part.

19 (P) ~~-(n)-~~ "Fund" means the Michigan underground storage tank
20 financial assurance fund created in section 21506.

21 (Q) ~~-(o)-~~ "Heating oil" means petroleum that is No. 1, No. 2,
22 No. 4--light, No. 4--heavy, No. 5--light, No. 5--heavy, and No. 6
23 technical grades of fuel oil; other residual fuel oils including
24 navy special fuel oil and bunker C; and other fuels when used as
25 substitutes for 1 of these fuel oils.

26 (R) ~~-(p)-~~ "Indemnification" means indemnification of an owner
27 or operator for a legally enforceable judgment entered against the

1 owner or operator by a third party, or a legally enforceable
2 settlement entered between the owner or operator and a third party,
3 compensating that third party for bodily injury or property damage,
4 or both, caused by an accidental release as those terms are defined
5 in R 29.2163 of the Michigan administrative code.

6 (S) ~~-(q)-~~ "Location" means a facility or parcel of property
7 where petroleum underground storage tank systems are registered
8 pursuant to part 211.

9 (T) ~~-(r)-~~ "Operator" means a person who was, at the time of
10 discovery of a release, in control of or responsible for the
11 operation of a petroleum underground storage tank system or a
12 person to whom an approved claim has been assigned or transferred.

13 (U) ~~-(s)-~~ "Owner" means a person, other than a regulated
14 financial institution, who, at the time of discovery of a release,
15 held a legal, equitable, or possessory interest of any kind in an
16 underground storage tank system or in the property on which an
17 underground storage tank system is located, including, but not
18 limited to, a trust, vendor, vendee, lessor, or lessee. Owner
19 includes a person to whom an approved claim is assigned or
20 transferred. Owner does not include a person or a regulated
21 financial institution who, without participating in the management
22 of an underground storage tank system and without being otherwise
23 engaged in petroleum production, refining, or marketing relating to
24 the underground storage tank system, is acting in a fiduciary
25 capacity or who holds indicia of ownership primarily to protect the
26 person's or the regulated financial institution's security interest
27 in the underground storage tank system or the property on which it

1 is located. This exclusion does not apply to a grantor,
2 beneficiary, remainderman, or other person who could directly or
3 indirectly benefit financially from the exclusion other than by the
4 receipt of payment for fees and expenses related to the
5 administration of a trust.

6 (V) ~~—(t)—~~ "Oxygenate" means an organic compound containing
7 oxygen and having properties as a fuel that are compatible with
8 petroleum, including, but not limited to, ethanol, methanol, or
9 methyl tertiary butyl ether (MTBE).

10 Sec. 21503. **AS USED IN THIS PART:**

11 (A) ~~—(1)—~~ "Payment voucher" means a form prepared by the
12 department that specifies payment authorization by the department
13 to the department of treasury.

14 (B) ~~—(2)—~~ "Petroleum" means crude oil, crude oil fractions,
15 and refined petroleum fractions including gasoline, kerosene,
16 heating oils, and diesel fuels.

17 (C) ~~—(3)—~~ "Petroleum underground storage tank system" means an
18 underground storage tank system used for the storage of petroleum.

19 (D) **"PRECERTIFICATION APPLICATION" MEANS THE APPLICATION**
20 **SUBMITTED BY AN OWNER OR OPERATOR SEEKING THE DEPARTMENT'S**
21 **ELIGIBILITY DETERMINATION FOR REIMBURSEMENT FOR THE COSTS OF**
22 **CORRECTIVE ACTION FROM THE TEMPORARY REIMBURSEMENT PROGRAM.**

23 (E) ~~—(4)—~~ "Refined petroleum" means aviation gasoline, middle
24 distillates, jet fuel, kerosene, gasoline, residual oils, and any
25 oxygenates that have been blended with any of these.

26 (F) **"REFINED PETROLEUM FUND" MEANS THE REFINED PETROLEUM FUND**
27 **ESTABLISHED UNDER SECTION 21506A.**

1 (G) "REFINED PETROLEUM PRODUCT CLEANUP INITIAL PROGRAM" MEANS
2 THE PROGRAM ESTABLISHED IN SECTION 21553.

3 (H) "REFINED PETROLEUM PRODUCT CLEANUP PROGRAM" MEANS THE
4 REFINED PETROLEUM PRODUCT CLEANUP INITIAL PROGRAM AND THE PROGRAM
5 BASED UPON THE RECOMMENDATIONS OF THE PETROLEUM CLEANUP ADVISORY
6 COUNCIL UNDER SECTION 21552(10).

7 (I) ~~—(5)—~~ "Regulated financial institution" means a state or
8 nationally chartered bank, savings and loan association or savings
9 bank, credit union, or other state or federally chartered lending
10 institution or a regulated affiliate or regulated subsidiary of any
11 of these entities.

12 (J) ~~—(6)—~~ "Regulatory fee" means the environmental protection
13 regulatory fee imposed under section 21508.

14 (K) ~~—(7)—~~ "Release" means any spilling, leaking, emitting,
15 discharging, escaping, or leaching from a petroleum underground
16 storage tank system into groundwater, surface water, or subsurface
17 soils.

18 (L) "SITE" MEANS A LOCATION WHERE A RELEASE HAS OCCURRED OR A
19 THREAT OF A RELEASE EXISTS FROM AN UNDERGROUND STORAGE TANK SYSTEM,
20 EXCLUDING ANY LOCATION WHERE CORRECTIVE ACTION WAS COMPLETED WHICH
21 SATISFIES THE CLEANUP CRITERIA FOR UNRESTRICTED RESIDENTIAL USE
22 UNDER PART 213.

23 (M) "TEMPORARY REIMBURSEMENT PROGRAM" MEANS THE PROGRAM
24 ESTABLISHED IN SECTION 21554.

25 (N) ~~—(8)—~~ "Underground storage tank system" means an existing
26 tank or combination of tanks, including underground pipes connected
27 to the tank or tanks, which is or was used to contain an

1 accumulation of regulated substances, and is not currently being
2 used for any other purpose, and the volume of which, including the
3 volume of the underground pipes connected to the tank or tanks, is
4 10% or more beneath the surface of the ground. An underground
5 storage tank system includes an underground storage tank that is
6 properly closed in place pursuant to part 211 and rules promulgated
7 under that part. An underground storage tank system does not
8 include any of the following:

9 (i) ~~-(a)-~~ A farm or residential tank of 1,100 gallons or less
10 capacity used for storing motor fuel for noncommercial purposes.

11 (ii) ~~-(b)-~~ A tank used for storing heating oil for consumptive
12 use on the premises where the tank is located.

13 (iii) ~~-(c)-~~ A septic tank.

14 (iv) ~~-(d)-~~ A pipeline facility, including gathering lines
15 regulated under either of the following:

16 (A) ~~-(i)-~~ The natural gas pipeline safety act of 1968, Public
17 Law 90-481, 49 ~~U.S.C.~~ **USC** Appx 1671 to 1677, 1679a to 1682, and
18 1683 to 1687.

19 (B) ~~-(ii)-~~ Sections 201 to 215, 217, and 219 of the hazardous
20 liquid pipeline safety act of 1979, title II of the pipeline safety
21 act of 1979, Public Law 96-129, 49 ~~U.S.C.~~ **USC** Appx 2001 to 2015.

22 (v) ~~-(e)-~~ A surface impoundment, pit, pond, or lagoon.

23 (vi) ~~-(f)-~~ A storm water or wastewater collection system.

24 (vii) ~~-(g)-~~ A flow-through process tank.

25 (viii) ~~-(h)-~~ A liquid trap or associated gathering lines
26 directly related to oil or gas production and gathering operations.

27 (ix) ~~-(i)-~~ A storage tank situated in an underground area such

1 as a basement, cellar, mineworking, drift, shaft, or tunnel if the
2 storage tank is situated upon or above the surface of the floor.

3 (x) ~~-(j)-~~ Any pipes connected to a tank described in
4 ~~subdivisions (a) to (i)-~~ **SUBPARAGRAPHS (i) TO (ix)**.

5 (xi) ~~-(k)-~~ An underground storage tank system holding hazardous
6 wastes listed or identified under subtitle C of the solid waste
7 disposal act, title II of Public Law 89-272, 42 ~~U.S.C.-~~ **USC** 6921
8 to 6939e, or a mixture of such hazardous waste and other regulated
9 substances.

10 (xii) ~~-(l)-~~ A wastewater treatment tank system that is part of a
11 wastewater treatment facility regulated under section 307(b) of
12 title III or section 402 of title IV of the federal water pollution
13 control act, 33 ~~U.S.C.-~~ **USC** 1317 and 1342.

14 (xiii) ~~-(m)-~~ Equipment or machinery that contains regulated
15 substances for operational purposes such as hydraulic lift tanks
16 and electrical equipment tanks.

17 (xiv) ~~-(n)-~~ An underground storage tank system with a capacity
18 of 110 gallons or less.

19 (xv) ~~-(o)-~~ An underground storage tank system that contains a
20 de minimis concentration of regulated substances.

21 (xvi) ~~-(p)-~~ An emergency spill or overflow containment
22 underground storage tank system that is expeditiously emptied after
23 use.

24 (xvii) ~~-(q)-~~ A wastewater treatment tank system.

25 (xviii) ~~-(r)-~~ An underground storage tank system containing
26 radioactive material that is regulated under the atomic energy act
27 of 1954, chapter 1073, 68 Stat. 919.

1 **(xix)** ~~—(s)—~~ An underground storage tank system that is part of
2 an emergency generator system at nuclear power generation
3 facilities regulated by the nuclear regulatory commission under 10
4 ~~C.F.R.—~~ **CFR** part 50, appendix A to part 50 of title 10 of the code
5 of federal regulations.

6 **(xx)** ~~—(t)—~~ Airport hydrant fuel distribution systems.

7 **(xxi)** ~~—(u)—~~ Underground storage tank systems with field-
8 constructed tanks.

9 **(O)** ~~—(9)—~~ "Work invoice" means an original billing acceptable
10 to the administrator and signed by the owner or operator and a
11 consultant that includes all of the following:

12 **(i)** ~~—(a)—~~ The name, address, and federal tax identification
13 number of each contractor who performed work.

14 **(ii)** ~~—(b)—~~ The name and social security number of each employee
15 who performed work.

16 **(iii)** ~~—(c)—~~ A specific itemized list of the work performed by
17 each contractor and an itemized list of the cost of each of these
18 items.

19 **(iv)** ~~—(d)—~~ A statement that the consultant employed a
20 documented sealed competitive bidding process for any contract
21 award exceeding \$5,000.00.

22 **(v)** ~~—(e)—~~ If the consultant did not accept the lowest
23 responsive bid received, a specific reason why the lowest
24 responsive bid was not accepted.

25 **(vi)** ~~—(f)—~~ Upon request of the administrator, a list of all
26 bids received.

27 **(vii)** ~~—(g)—~~ Proof of payment of the co-pay amount as required

1 under section 21514.

2 Sec. 21506a. (1) The refined petroleum fund is created within
3 the state treasury.

4 (2) The state treasurer may receive money or other assets from
5 any source for deposit into the refined petroleum fund. The state
6 treasurer shall direct the investment of the refined petroleum
7 fund. The state treasurer shall credit to the refined petroleum
8 fund interest and earnings from refined petroleum fund investments.

9 (3) Money in the refined petroleum fund at the close of the
10 fiscal year shall remain in the refined petroleum fund and shall
11 not lapse to the general fund.

12 (4) Money from the refined petroleum fund shall be expended,
13 upon appropriation, only for 1 or more of the following purposes:

14 (a) For gasoline inspection programs under both of the
15 following:

16 (i) The weights and measures act, 1964 PA 283, MCL 290.601 to
17 290.634.

18 (ii) The motor fuels quality act, 1984 PA 44, MCL 290.641 to
19 290.650d.

20 **(B) NOT MORE THAN \$15,000,000.00 OF THE MONEY TRANSFERRED TO**
21 **THE REFINED PETROLEUM FUND PURSUANT TO SECTION 21506(6), FOR THE**
22 **REFINED PETROLEUM PRODUCT CLEANUP INITIAL PROGRAM AND FOR THE**
23 **DEPARTMENT'S ADMINISTRATIVE COSTS ASSOCIATED WITH THE TEMPORARY**
24 **REIMBURSEMENT PROGRAM.**

25 **(C) NOT MORE THAN \$45,000,000.00 OF THE MONEY TRANSFERRED TO**
26 **THE REFINED PETROLEUM FUND PURSUANT TO SECTION 21506(6), FOR**
27 **IMPLEMENTATION OF THE TEMPORARY REIMBURSEMENT PROGRAM.**

1 (D) ~~—(b)—~~ For corrective actions necessary to address releases
2 of refined petroleum products under a refined petroleum product
3 cleanup program established by law following the issuance of
4 recommendations from the refined petroleum cleanup advisory council
5 created in section 21552.

6 (E) ~~—(e)—~~ For the reasonable administrative costs of the
7 department, the department of agriculture, the department of
8 attorney general, and the department of treasury in administering
9 the refined petroleum fund and in implementing the programs
10 receiving revenue from the refined petroleum fund.

11 Sec. 21552. (1) The refined petroleum cleanup advisory council
12 is created.

13 (2) The council shall consist of all of the following:

14 (a) Two members appointed by the senate majority leader, 1 of
15 whom shall be a representative of the petroleum industry.

16 (b) Two members appointed by the speaker of the house of
17 representatives, 1 of whom shall be a representative of the
18 petroleum industry.

19 (c) Three members appointed by the governor, 1 of whom shall
20 be a representative of the petroleum industry.

21 (3) The members first appointed to the council shall be
22 appointed not later than 60 days after the effective date of the
23 amendatory act that added this section.

24 (4) Members of the council shall serve until a successor is
25 appointed.

26 (5) If a vacancy occurs on the council, the unexpired term
27 shall be filled in the same manner as the original appointment was

1 made.

2 (6) The first meeting of the council shall be called by the
3 director. At the first meeting, the council shall elect from among
4 its members a chairperson and other officers as it considers
5 necessary or appropriate. After the first meeting, the council
6 shall meet at least quarterly, or more frequently at the call of
7 the chairperson or if requested by 2 or more members.

8 (7) Five of the members of the council constitute a quorum for
9 the transaction of business at a meeting of the council. An
10 affirmative vote of a majority of the members of the council is
11 required for official action of the council.

12 (8) Members of the council shall serve without compensation.
13 However, members of the council may be reimbursed for their actual
14 and necessary expenses incurred in the performance of their
15 official duties as members of the council.

16 (9) As soon as practical, but not later than 60 days after all
17 members of the council have been appointed under subsection (2),
18 the council shall make a recommendation to the governor and the
19 legislature on how the money transferred under section 21506(6),
20 less any amounts appropriated for the fiscal year ending September
21 30, 2004, should be expended.

22 (10) By April 1, 2005, the council shall submit to the
23 governor and the legislature a report that does all of the
24 following:

25 (a) Evaluates and makes recommendations for a refined
26 petroleum cleanup program that provides for corrective actions
27 necessary to address releases of refined petroleum products. The

1 recommended refined petroleum cleanup program shall be designed to
2 benefit owners and operators and to provide for corrective actions
3 at locations for which an owner or operator who is liable for
4 corrective actions has not been identified or is insolvent.

5 (b) Makes recommendations on an appropriate limitation on
6 administrative costs under section ~~21506a(4)(e)~~ **21506A(4)(E)**.

7 (c) Makes recommendations to update obsolete provisions of
8 this part.

9 (11) Effective 180 days after the council submits its report
10 under subsection (10), the council is dissolved.

11 (12) This section is repealed ~~August 1~~ **DECEMBER 31**, 2006.

12 Enacting section 1. This amendatory act does not take effect
13 unless

House Bill No. 6047

14 of the 93rd Legislature is enacted into law.